

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
OAKLAND UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013070320
V.	
PARENT ON BEHALF OF STUDENT,	
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PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013051017
V.	
OAKLAND UNIFIED SCHOOL DISTRICT.	ORDER GRANTING STUDENT'S REQUEST FOR CONTINUANCE
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On July 17, 2013, Counsel for Student filed a request to continue the dates in this matter, based upon the unavailability of three primary witnesses for Student during the scheduled hearing dates.¹ On July 19, 2013, Counsel for the District opposed the request based upon its belief that Student's request for continuance is not really based upon witness unavailability, but is rather a veiled attempt to attempt additional assessment information, and therefore, if the continuance is granted, OAH should make an order allowing the District to observe Student in his private placement at the same time as Student's witnesses' observation of Student in his private placement.

¹ The pre-hearing history of this case is extensive. On July 2, 2013, Student filed a request for continuance to September/October 2013. The District opposed the continuance. On July 8, 2013, OAH held a PHC on Student's complaint, OAH Case No. 2013051017, at which time the ALJ granted the District's request to consolidate its newly filed request for due process complaint, OAH Case No. 2013070320 with Student's complaint. As part of that consolidation, the ALJ vacated the hearing dates in Student's complaint, and set new hearing dates in the District's (now the primary of the consolidated cases), commencing the week of August 19 through 21, 2013. Student contends he indicated during the PHC he would again request continuance if his witnesses were unavailable during the August hearing dates. Although all of this was discussed during the PHC and was contained in the PHC order issued July 9, 2013, the District filed a formal request for consolidation on July 12, 2013, which OAH formally granted on July 18, 2013. Meanwhile, in response to the newly minted hearing dates of August 19 through 21, 2013, Student filed the above request for continuance.

LEGAL APPLICATION

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, sub. (f), 56505, sub. (f)(3); Cal. Code Regs. tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student has indicated that three of his primary witnesses will be unavailable for testimony during the August hearing dates. The District's opposition is based upon (1) its belief that Student has ulterior motives for the continuance; (2) the District would agree to allow Student's witnesses to testify by telephone during their vacations; (3) the District was willing to have Student, the ALJ, and witnesses "stay late" in order to accommodate witness testimony; (4) the District had already made arrangements to have District witnesses available to testify during their summer off-time; and (5) the District wanted the same observation of Student time as Student's witnesses. None of the District's grounds for denying Student a continuance of the hearing trump Student's overt request for continuance due to the unavailability of witnesses during the summer. The District further indicates it will be prejudiced by such a lengthy continuance; however, it is the District itself, due to heavy calendaring, which prevents an earlier continuance date.

The District has also requested that, in the event of continuance, it be granted the right to observe Student in his private school setting during the same time frame as Student's witnesses. This request is based upon the District's interpretation of Student's subliminal reasons for requesting this continuance. At the present time, this ALJ can only rule on the apparent reasons for continuance. There is no information contained in this motion to support a finding that Student is being observed by anyone at all or that the District has even made a request of Student's placement to observe Student without the need of a formal order from OAH. Therefore, the District's request for an order to observe Student in his private placement is denied without prejudice, and the District may refile its request should the actual need arise.

ORDER

1. Student's request for continuance is granted. All dates are vacated and the matter will be set as follows:

Prehearing Conference: September 16, 2013, at 1:30 PM

Due Process Hearing: September 23, 2013 through September 26, 2013, continuing day to day thereafter, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Start time for the hearing shall be set by the ALJ at the PHC.

2. The District's request for an order for observation of Student in his private placement is denied without prejudice.

IT IS SO ORDERED.

Dated: July 22, 2013

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings